

Appln. No.: 09/838,147

Reply to Office Action of August 21, 2008

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**REMARKS/ARGUMENTS**

The Office Action of August 21, 2008, has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 23 and 27 were canceled previously. Claims 21, 22, and 24 have been canceled in the present paper. Claims 25, 39, and 42 have been amended. No new matter has been added. Claims 1-20, 25, 26, and 28-42 are pending upon entry of the present paper.

Applicants note with appreciation the indication of the allowability of claims 1-20 and 29-38. Applicants note that claim 42 was not rejected on the basis of prior art (e.g., under one or more of 35 U.S.C. §§ 102, 103). Thus, Applicants believe that claim 42 is patentable, in view of the below remarks related to the rejection under 35 U.S.C. § 101.

Applicants submit that claims 25, 26, 28, and 39-42 are in condition for allowance, and respectfully request notification of the same.

***Rejections Under 35 U.S.C. § 101***

Claim 42 stands rejected under 35 U.S.C. § 101 because the preamble lacks support in the specification. More specifically, the Office contends that the specification does not describe the “One or more computer storage media storing computer executable instructions . . .” as recited in claim 42. This rejection is traversed.

Amended claim 42 recites “One or more *tangible* computer storage media storing computer executable instructions . . .” Applicants submit that the illustrative examples provided in the specification at page 5, lines 27-30, in relation to RAM memory and Flash ROM, and the description at page 13, lines 27-30 in relation to software control provides adequate written description support for the recited one or more *tangible* computer storage media storing computer executable instructions. Furthermore, Applicants note that the literal phraseology “computer storage media” and “computer executable instructions” need not appear in the specification. See MPEP § 2163.02 (providing that the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement).

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For at least the foregoing reasons, Applicants submit that the specification provides adequate support for the preamble of claim 42. As such, Applicants respectfully request withdrawal of the section 101 rejection of claim 42.

***Rejections Under 35 U.S.C. § 112***

Claim 25 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is traversed.

Applicants have amended claim 25 to clarify the features recited therein. Specifically, amended claim 25 recites “wherein the controller is configured to send the resource related information *to the wireless terminal* via a push command.” Thus, as recited, the controller sends the resource related information to the wireless terminal via a push command. Furthermore, claim 25 is directed to an apparatus, and the apparatus is comprised of the controller as recited.

In view of the amendments to claim 25 and the foregoing remarks, Applicants respectfully request withdrawal of the section 112 rejection of claim 25.

***Rejections Based on Rupp in view of Luna***

Claims 25, 28, and 39-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. patent no. 6,144,464 to Rupp et al. (“Rupp”) in view of U.S. pub. no. 2002/0123335 to Luna et al. (“Luna”). This rejection is traversed.

Claim 25 recites features related to an apparatus comprised of a wireless communication terminal and a controller, wherein the controller is configured to send resource related information to a wireless terminal via a push command. As discussed in Applicants’ Amendment of May 14, 2008, at pages 9-11, Luna teaches away from such features.<sup>1</sup> Applicants incorporate the remarks included therein by way of reference. In short, Luna at paragraph [0018] describes a push proxy 8 that is used during network-initiated provisioning, as opposed to user-initiated provisioning, to “push” provisioning content from content servers 6 to mobile stations 1. The description in Luna fails to disclose features related to pushing via a push command

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<sup>1</sup> The discussion of Luna in Applicant’s Amendment of May 14, 2008, at pages 9-11 was primarily in regards to now-canceled claims 21 and 23; however, the same rationale was used to distinguish claim 25 as discussed at page 11.

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resource related information from an apparatus comprised of a wireless communication terminal to a wireless terminal as recited in claim 25.

Moreover, even assuming (without admitting) that the facsimile machine 198 and the transmitting/receiving fax machine 210 disclosed in Rupp at Figure 2 may appropriately be analogized to the apparatus and the wireless terminal of claim 25, one of skill in the art would not have modified Rupp to include the disclosures of Luna because Luna describes that push proxy 8 is not used during user-initiated provisioning (e.g., between facsimile machine 198 and fax machine 210 of Rupp). Accordingly, the combination of references is improper because there would be no reasonable expectation of success given the incompatible disclosures. See MPEP § 2143.02. See also MPEP § 2143.01 (V. The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose) (providing that if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification).

For at least the foregoing reasons, claim 25 is allowable.

Claims 28 and 39-41 each depend from claim 25 and are allowable for at least the same reasons as claim 25.

#### ***Rejections Based on Rupp in view of Lee***

Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rupp, in view of U.S. patent no. 6,490,291 to Lee et al. ("Lee"). This rejection is traversed.

Notwithstanding whether Lee is properly combinable with Rupp (or for that matter, whether Lee is properly combinable with Luna), Lee fails to cure the deficiencies of Rupp (and Luna) described above with respect to independent claim 25. Claim 26 depends from claim 25 and is allowable for at least the same reasons as claim 25.

#### **CONCLUSION**

If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly. All rejections having been

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addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,

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